

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **December 16, 2003, Work Session**

AGENDA ITEM NO.: 7

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Non-Resident Charges for Library Borrowers' Cards**

RECOMMENDATION: Reaffirm or eliminate the charges for non-residents to have borrowing privileges at the Lynchburg Public Library. An amendment that would increase the administrative burden of complying with this provision is not recommended.

SUMMARY: Section 24-14 of the City Code (attached) states. "The annual fee for obtaining a nonresident borrower's card shall be twenty-five dollars (\$25.00)." The term "nonresident" is not defined.

Recently, two Council members have received an inquiry from a County resident, who owns real property in the City, and whose spouse is a teacher in a City school. The teacher desires to borrow materials for class instruction from the Lynchburg Public Library but feels, that since the family pays taxes in the City, they should not have to pay for a borrower's card. It is unknown whether or not the teacher has attempted to borrow the materials on interlibrary loan through the school library.

Both Council members have asked that this matter be discussed at a work session. Library Director Lynn Dodge and City Attorney Walter Erwin have provided background memoranda. It appears that complying with the City Code provision creates an administrative burden on the library staff. Attempting to qualify the term "non-resident" may increase that burden and lead to questions about the provision of other City services to "nonresidents" who are also City taxpayers.

PRIOR ACTION(S): City Council established the non-resident borrower's card fee June 27, 1989.

FISCAL IMPACT: Approximately \$10,000 a year in revenue.

CONTACT(S): Kimball Payne, Lynn Dodge

ATTACHMENT(S): Excerpt from the Lynchburg City Code  
Memoranda from Lynn Dodge and Walter Erwin

REVIEWED BY: lkp

## **Excerpt From the Lynchburg City Code**

### **ARTICLE III. LIBRARIES**

#### **Sec. 24-10. Establishment.**

There is hereby established a division of libraries within the department of libraries and museums. (Ord. No. O-89-185, § 1, 6-27-89)

#### **Sec. 24-11. Staff.**

On recommendation of the director of libraries and museums, the city manager shall appoint such staff members and employees as may be authorized from time to time to carry out effectively the work of this division. (Ord. No. O-89-185, § 1, 6-27-89)

#### **Sec. 24-12. Advisory committee.**

(a) There shall be an advisory library committee consisting of seven (7) members, appointed by the city manager with the approval of the city council.

(b) One (1) member of such committee shall be appointed for a term ending June 30, 1968; two (2) members shall be appointed for terms ending June 30, 1969; two (2) members shall be appointed for terms ending June 30, 1970; and two (2) members shall be appointed for terms ending June 30, 1979. All subsequent appointments to the committee shall be for terms of three (3) years. No member shall serve more than two (2) consecutive terms, but may be reappointed after a lapse of three (3) years. Members shall be residents of the city. Vacancies shall be filled for the remainder of unexpired terms in the same manner as appointments are made.

(c) The committee shall elect from its membership a chairman, and a secretary who may or may not be a member of the committee.

(d) It shall be the duty of the committee to act in an advisory capacity to the city manager and the city council.

(e) The committee shall hold regular meetings with the city manager at such times and places as may be agreed upon.

(f) In the event of a difference of opinion between the city manager and the advisory committee on any matter relating to the library, the committee shall have the right to present its views to the city council. (Ord. No. O-89-185, § 1, 6-27-89)

#### Sec. 24-13. Rules and regulations.

The city manager shall have the right to prescribe reasonable rules, regulations and charges for the use, by the public, of the books, documents writings and other library property in and outside of the library quarters so that the public shall receive the largest use thereof and greatest benefit therefrom consistent with the proper protection and preservation of the library and the increase and expansion thereof. Such rules, regulations and charges shall be valid and binding unless and until otherwise directed by council who shall promptly be furnished with a copy of such rules, regulations and charges and amendments thereto. (Ord. No. O-89-185, § 1, 6-27-89)

#### Sec. 24-14. Library fees.

The annual fee for obtaining a nonresident borrower's card shall be twenty-five dollars (\$25.00). (Ord. No. O-89-185, § 1, 6-27-89)

TO: Kimball Payne City Manager

FROM: Lynn L. Dodge Public Library

DATE: November 20, 2003

RE: Library Cards – Non-Resident Fee, etc.

**Background:** The Non-Resident Borrowers fee was enacted by City Council in the early 1980's after Council allocated \$1.8 million in local funds to refurbish the former Sears retail store at the Plaza for the new public library. They decided non-city residents should help pay for it. Originally set at \$15.00 for an annual family/household card, the fee was increased to \$25.00 by City Council in the early 1990's. In 2002, a 3-month, \$7.00 option was added by staff. The only City Council authorized exemptions are for CVCC students. The only other exemption discussed was for students attending colleges in the city; Council decided that as long as they lived on campus they should pay the fee. If they have a city address, i.e. rent an apartment, we give them a card.

A library card is required only to check out materials, to use the Interlibrary Loan service and/or to access the FINDITVA.com database through this library's web site. All library programs and in-house materials are open to anyone without restriction.

**Overview:**

	<u>Cards (to date)</u>	<u>Checkouts (FY 2003)</u>
Total	28,620	466,092
Lynchburg	27,122	417,397
Amherst County	248	9,749
Appomattox	104	3,612
Bedford County	437	17,101
Campbell County	453	13,830
CVCC	11	42
Other areas of residence	250**	2,171
**college students, travelers, etc.		
Business cards	12*	
Private Schools	15*	<u>*5,180 collectively</u>
Non-profits	15*	
Total check outs by non-residents:		48,695

Income realized in FY 2003: \$ 9,824

Total NR and Quarterly users (to date): 1,498 (estimated, due to category overlap)

**Basic (Household) Non-resident Card:** A primary card is issued in the name of one person, usually a parent. Additional family members can be issued individual cards, but all are linked to and fines and fees notices are sent to the primary cardholder. Staff estimates that for each “family” card 2.7 additional cards are issued. These renew annually.

**CVCC:** These are issued by the semester, one per student; proof of enrollment is required.

**Businesses:** If a business is located in the city, a single card is issued in the name of the business. A letter signed by a senior manager is required and must include the names of all individuals authorized to use the card; those name are entered as notes in our database under the company name. The company keeps the card and authorized person brings it with him and checks out items in the company name; no record is kept of the individual’s check-out history. This policy was revised recently to include a requirement that the businesses be registered with the Commissioner of Revenue as proof of viability. These renew annually

NOTE: Staff do not monitor the specific titles checked out , but most are, obviously, used for personal interests. It is a way around the non-resident fee, but has not been a problem because so few (12) are in currently active and only a couple are used heavily. .

**Non-resident property owners:** Non-resident property owners have never been issued free cards. Staff estimate they receive about 8-10 inquires annually. There is, obviously, a disconnect between these and the issuance of business cards.

**Schools:** Cards are issued to private schools whose students regularly *visit or use* the library as a class activity. These include: Bridges, the Rivermont School, College Hill Neighborhood School, etc. The school accepts responsibility for all materials and designates staff users. Currently there are 15 school cards active. The cards renew annually.

**City schools:** No cards are currently issued to any city schools. All that is necessary is that a city school accept responsibility for materials checked out by designated staff.

**City school teachers:** They have never been singled out for special treatment. Non-residents can borrow on Interlibrary Loan, but it is cumbersome. Many teachers (both public and private) use their personal cards to check out classroom materials (many take 20-40 items at time).

**City employees:** Except for library employees and Don Johnson, whose City of Lynchburg job requires him to live at Pedlar Dam, non-resident city employees have never been issued free cards. Library employees are encouraged, though not required, to read as part of their job.

**Procedural issues, if authorized by City Council:**

**Non-resident property owners:** A real property tax receipt and proof of identify would be required. We would like to consider them as “non-residents,” with all family cards linked to one primary card. They would renew annually.

**City school teachers:** These individual-specific cards can be issued on a calendar or school year cycle and renewed annually. A school identification would be required. Would they be limited to one card, or family members also be eligible for cards?

**Business cards:** There are only 12 business cards active and all are small outfits and only 2-3 cards are heavily used. If this is publicized, staff anticipate a run on business cards as a way around the non-resident fee. Once major company employees get wind of it, it will be difficult to know who is authorized to request cards.

We had a situation recently where a small business owner regularly used a business card for several years. Eventually, he wanted a second card (for his spouse) and he presented an authorization letter on a different company stationary. Staff initially denied the request because he already had a card; he raised a fuss because he claimed each independent company was eligible, he was paying taxes, employing staff, etc. But, staff were suspicious because the letter head looked like it was done in a PC printer. It turned out the second company was no longer registered to do business in the city; so we denied him the card. He owned a third company, which is registered, and he was issued a second card.

We now require a brief waiting period while we check to see if the business is registered with the Commissioner of Revenue.

## MEMORANDUM

**To:** L. Kimball Payne City Manager  
**FROM:** Walter Erwin *W.C.E.* City Attorney  
**Date:** November 19, 2003  
**Re:** Library's Annual Nonresident Borrower's Card Fee

You recently mentioned that an individual who does not live in the City but owns real property in the City expressed concern over the \$25 fee the library charges for a nonresident borrower's card. It appears likely that City Council will discuss this issue at an upcoming work session. I thought a brief explanation of the history of the \$25 nonresident borrower's card fee might be helpful.

The \$25 annual nonresident borrower's card fee is required by Section 24-14 of the City Code. The fee was adopted by City Council on June 27, 1989 as part of a restructuring of City government. Prior to that time the City had a "Department of Civic Enrichment" that oversaw the City's parks, cemetery, City Stadium, library and museum. On June 27, 1989, the Department of Civic Enrichment was divided into the "Department of Parks and Recreation" and the "Department of Libraries and Museums". As part of the restructuring a number of sections were added to the City Code dealing with the establishment and administration of the Department of Libraries and Museums. Section 24-14, requiring an annual nonresident borrower's card fee was added to the City Code at that time.

At that time there was some discussion as to whether or not individuals that did not reside in the City but owned real estate in the City should have to pay a fee to check materials out of the library. However, it was pointed out that there are a number of areas that require residency in order to qualify for certain rights or privileges. For example, in order to receive a free public education in the City Schools, students must reside within the City limits. The fact that a student's parents own real estate within the City and pay taxes that support the public school system does not entitle them to a free public education in the City Schools. Also, individuals who own property in the City are not entitled to vote in City Council elections unless they actually reside within the City. Even though

City Council members may make decisions that impact nonresidents' properties, residency within the City is a requirement for voting. In addition, only City residents are entitled to make a free monthly trip to the landfill.

When Section 24-14 was added to the City Code no one felt a need to define "resident" or "nonresident." Those terms were given their normal day-to-day meaning. A resident is a person who actually lives within the City limits.

The issue of charging nonresidents an annual borrower's card fee was raised by a resident of one of the adjoining counties in 1993. Delegate Joyce K. Crouch requested an Attorney General's Opinion on this issue. In an Opinion dated August 16, 1993, the Attorney General advised that a local governing body had the right to charge a nonresident fee to persons who do not live within the locality as a condition for checking materials out of the public library. A copy of the Attorney General's Opinion is attached for your information.

I hope these background materials are helpful in discussing this matter.

Enclosure



## CITY CODE

### **Sec. 24-14. Library fees.**

The annual fee for obtaining a nonresident borrower's card shall be twenty-five dollars (\$25.00). (Ord. No. O-89-185, § 1, 6-27-89)

**LIBRARIES: LOCAL AND REGIONAL LIBRARIES -- STATE AND FEDERAL AID.**

Local governing body may charge nonresident borrowing fee at locality's free public library; regional library may charge similar fee to nonresidents of region it serves.

August 16, 1993

The Honorable Joyce K. Crouch  
Member, House of Delegates

You ask whether a local governing body may charge nonresidents of the locality a fee for borrowing privileges at the locality's free public library. You add that the nonresidents are allowed access to the public library reading room, its catalogs, and its books and other library materials on site, without charge.

1. Applicable Statutes

Section 42.1-33 of the *Code of Virginia* provides, in part, that "[t]he governing body of any city, county or town shall have the power to establish a free public library for the use and benefit of its residents."

Section 42.1-34 further provides:

Any city, town or county shall have the power to enter into contracts with adjacent cities, counties, towns, or state-supported institutions of higher learning to receive or to provide library service on such terms and conditions as shall be mutually acceptable ....

Section 42.1-37 provides:

Two or more political subdivisions, (counties or cities), by action of their governing bodies, may join in establishing and maintaining a regional free library system under the terms of a contract between such political subdivisions ....

Section 42.1-40 provides, in part:

The regional library board shall have authority to execute contracts ... with the library boards of the respective jurisdictions, and any and all other agencies for the purpose of administering a public library service within the region ... to the same extent as the library board of any one of the jurisdictions which are parties to the agreement would be so authorized.

The State Library Board is authorized to provide grants and state financial aid to local free public libraries and regional free library systems. See §§ 42.1-46 to 42.1-54.

Section 42.1-55 provides that "[t]he service of books in library systems and libraries receiving state aid shall be free and shall be made available to all persons living in the county, region, or municipality."

## II. Local Governing Body May Charge Nonresident Fee for Library Borrowing Privileges

Section 42.1-33 authorizes a local governing body to provide "a free public library for the use and benefit of its residents." (Emphasis added.) Under accepted principles of statutory construction, when no language in a statute compels a different interpretation, the statutory words are given their usual meaning, including their proper grammatical effect. See *School Board v. State Board et al.*, 219 Va. 244, 250-51, 247 S.E.2d 380, 384 (1978); ATT'Y GEN. ANN. REP.: 1991 at 178, 179; 1987-1988 at 538, 539; 1986-1987 at 53, 53-54. The plain language and grammatical construction of § 42.1-33 refers to a local governing body's free public library services only to "its residents." In my opinion, it is consistent with the intention of the General Assembly, indicated in § 42.1-33, for a locality to charge a fee for nonresidents to receive borrowing privileges in the locality's public library.

Section 42.1-55, which requires free services by library systems or libraries receiving state aid, requires free services only to the "persons living in the county, region, or municipality" of the library system or library receiving the state aid.<sup>1</sup> Section 42.1-55 does not prohibit a "county, region, or municipality" that receives state aid from charging a "borrowing fee" to nonresidents of that county, region, or municipality. Moreover, the Virginia State Library and Archives has advised my Office that no state regulations prohibit a county or municipality from charging such a nonresident library borrowing fee.

The General Assembly thus has left to the discretion of the governing body funding the public library the decision whether free library services should be extended to nonresidents. Local governing bodies are authorized to contract for the extension of library services to residents in adjacent jurisdictions "on such terms and conditions as shall be mutually acceptable." Section 42.1-34; see also § 42.1-35 (giving local library boards power to adopt regulations "as may be expedient"); § 42.1-40 (giving regional library boards power to contract to same extent as library board of any of participating jurisdictions). There is no statutory requirement that such regulations or contracts encompass all library services, or that services be extended to nonresidents without charge.

The only statutory provision expressly requiring the extension of public library services without charge is § 42.1-55, which, as discussed above, requires a regional, county or municipal library receiving state aid to make free services available to residents of its respective region, county or municipality.

In my opinion, therefore, the governing body of a locality may impose a charge on nonresidents for borrowing privileges at the locality's free public library. A regional library may impose a similar fee on nonresidents of the region it serves.

<sup>1</sup>You indicate that the city library about which you are asking is not part of a regional library system.